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523 Fed. Appx. 329

 **LM Ins. Corp. v. Canal Ins. Co., 523 Fed. Appx. 329** (Copy citation)

United States Court of Appeals for the Sixth Circuit  
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No. 12-5857

**Reporter:** **523 Fed. Appx. 329** | [2013 U.S. App. LEXIS 7431](#) | 2013 FED App. 0360N (6th Cir.) | 2013 WL 1458923

LM INSURANCE CORPORATION; LIBERTY MUTUAL FIRE INSURANCE COMPANY, Plaintiffs-Appellees, v. CANAL INSURANCE COMPANY, Defendant-Appellant.

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**Prior History:** ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY.

[LM Ins. Corp. v. Canal Ins. Co., 2012 U.S. Dist. LEXIS 39214 \(E.D. Ky., Mar. 22, 2012\)](#)

#### Core Terms

contract, insure, policy, mutual, coverage, covered, term, judgment, estate, endorsement, claims, truck, auto, party, amount, defense, load, tender, haul, insurance policy, defense costs, agreement, primary, vehicle, contract of hire, district court, time, prejudgment interest, named insured, accident

#### Case Summary

##### Procedural Posture

Plaintiff insurers sought a declaratory judgment that defendant insurer had a duty to defend a corporation for the claims asserted in another action and that plaintiffs' insurance policies were excess to defendant's insurance policy. Plaintiffs also sought reimbursement for the defense costs, and prejudgment interest. The United States District Court for the Eastern District of Kentucky granted plaintiffs summary judgment. Defendant appealed.

##### Overview

The court found that the corporation only qualified for coverage to the extent that it met the criteria under the omnibus and vicarious-liability clauses of defendant's policy because the corporation was not a named insured or otherwise entitled to first-class coverage. The corporation was covered under the omnibus clause because the corporation used the covered auto when it loaded aggregate, and the accident, as alleged in the other action, arose from that use. Further, defendant's policy was primary because the action involved a vehicle owned by its insured. Defendant's policy covered both the vicarious-liability and independent-misconduct claims in the other action. Defendant was given notice because plaintiffs tendered the defense on behalf of the corporation. Finally, the district court did not abuse its discretion when it awarded plaintiffs prejudgment interest because the district court's statement implied that defendant should have known the amounts owed for the corporation's defense because had defendant assumed the defense, as it should have done, it would have received the amounts invoiced, tendered to, and paid by plaintiffs.

##### Outcome

The decision of the district court was affirmed.